RECENT IMPORTANT DECISIONS

BANKRUPTCY—DISCHARGEABILITY OF TORT JUDGMENT.—Plaintiff recovered judgment against X for damages caused by X's negligent operation of his automobile. Afterwards X obtained a discharge in bankruptcy. *Held,* that the judgment was thereby discharged. *Jefferson Transfer Co.* v. *Hull,* (Wis. 1918), 166 N. W. 1.

§ 17a of the BANKRUPTCY ACT recites that "a discharge in bankruptcy shall release a bankrupt from all of his provable debts, except such as * * * (2) are liabilities for * * * willful and malicious injuries to the person or property of another * * *" § 63a (1) includes among provable debts "a fixed liability, as evidenced by a judgment or an instrument in writing, absolutely owing at the time of the filing of the petition." The remaining clauses of § 63a refer to costs and provable debts reduced to judgments after the filing of the petition and to debts which are "(4) founded upon an open account, or upon a contract express or implied." Reading the two sections together, as we must, it seems that the statute prescribes a double requirement for the discharge of a specific liability: first, it must be "provable"; second, it must be outside the exceptions enumerated in § 17a. *Friend* v. *Talcott,* 228 U. S. 27. The enumeration of certain non-dischargeable tort liabilities presupposes that some other tort liabilities may be discharged. *In re New York Tunnel Co.,* 159 Fed. 688. This squares with the older cases holding that liquidation of a tort claim by judgment makes the claim provable. *Comstock* v. *Grout,* 17 Vt. 512; *In re Comstock,* 22 Vt. 642; *Ellis* v. *Ham,* 28 Me. 385; *Crouch* v. *Gridley,* 6 Hill (N. Y.) 250; *Kellogg* v. *Schuyler,* 2 Denio (N. Y. 73; *Blake* v. *Bigelow,* 5 Ga. 437; *Howland* v. *Carson,* 16 N. B. R. 372. Whatever the reason, all the cases agree with the principal case in allowing the discharge of a tort judgment unless the liability falls within the exceptions of § 17a. *In re Lorde,* 144 Fed. 320; *U. S. ex rel. Kelley* v. *Peters,* 166 Fed. 613, 177 Fed. 885, 217 U. S. 606; *In re Walrath,* 175 Fed. 243; *In re Wakefield,* 207 Fed. 180; *In re Berlin &c. Co.,* 225 Fed. 683, affirmed *sub. nom. Moore* v. *Douglas,* 230 Fed. 399; *McClellan* v. *Schmidt,* 235 Fed. 986; *Johnston* v. *Bruckheimer,* 133 App. Div. (N. Y.) 649; *Thompkins* v. *Williams,* 137 App. Div. (N. Y.) 521, 206 N. Y. 744; *In re Grout,* 88 Ver. 318; BLACK, BANKR. § 741; BRANDENBURG, BANKR. § 1560.; COLLIER, BANKR. (11th), 436; REMINGTON, BANKR., § 680. The opposing view would make no distinction in this regard between liquidated and unliquidated tort liabilities. LOVELAND, BANKR. § 296, 20 CASE AND COMMENT 591. Decisive cases hold unliquidated tort claims non-provable, and their reasoning would generally include tort judgments as well. *Brown* v. *United Button Co.,* 149 Fed. 48; 7 COL. L. REV. 360; 20 HARV. L. REV. 646; 9 MICH. L. REV. 499; *Eberlein* v. *Fidelity & Dep. Co.,* 164 Wis. 242. § 63 has been considered as referring only to contractual or quasi-contractual claims. Moreover, the rendition of a judgment does not generally change the nature of the obligation. *Boynton* v. *Ball,* 121 U. S. 457; 15 COL. L. REV. 543;

Woehrle v. *Canclini,* 158 Cal. 107. As the latest expression of the legislature, § 63 would ordinarily control if it clearly excludes tort judgments from being proved. *U. S.* v. *Jackson,* 143 Fed. 783.

BILLS AND NOTES—BONA FIDE HOLDER—INTERDEPENDENT AGREEMENTS.—Plaintiff gave his notes to a land company under a contract that in consideration of the payment of the notes, the payee should convey certain land and on the date of the last payment, plaintiff should have a warranty deed. The payee indorsed the notes to the defendant before maturity for value. Defendant also took an assignment of the land contract for security. On the maturity of the first note, plaintiff tendered payment asking for a conveyance. As the land company had become insolvent and had never owned the land, a conveyance could not be made; thereupon plaintiff deposited the money in defendant bank upon an agreement that plaintiff might withdraw it when he saw fit. When plaintiff sought to withdraw it, defendant claimed the amount of the notes. *Held,* that the plaintiff was not liable on the notes. *Todd* v. *State Bank of Edgewood,* (Ia. 1917), 165 N. W. 593.

The case seems on its face to be well within the doctrine of *McNight* v. *Parsons,* 136 Ia. 390, to the effect that knowledge by the purchaser of a negotiable instrument that it was given in consideration of an executory contract will not affect his rights as a *bona fide* holder unless he also had notice of a breach of such contract. *Russ Lumber &c. Co.* v. *Land &c. Co.,* 120 Cal. 521; *Bank of Sampson* v. *Hatcher,* 151 N. C. 359; *U. S. Nat. Bank* v. *Floss,* 38 Ore. 68. But the court in the principal case applies the rule that the purchaser who knows that the performance of an executory agreement is a condition precedent to the right of the payee to demand or recover payment is in no better position than the payee. *Thomas* v. *Page,* Fed. Cas. No. 13906; *Sutton* v. *Beckwith,* 68 Mich. 303. This modifies the *McKnight* case, *supra,* for that pays no attention to the kind of executory contract the purchaser might know of. Though the distinction between notice of an executory contract and notice of the existence of mutually dependent agreements had been pointed out, the cases ignored it. *Jennings* v. *Todd,* 118 Mo. 296; 7 HARV. L. REV. 431. Even the *Sutton* case, *supra,* the opinion of which supports the instant case, may be distinguished on the facts because the purchaser was there charged with knowledge of the actual fraud of the payee.

BROKERS—AUTHORITY IN WRITING—SUFFICIENCY IN DESCRIPTION OF LAND.—Defendant in writing authorized plaintiff to sell property describing it as "my stock ranch located in sections 9, 17, and 21, Township 3 South, Range 13 East, Sweetgrass County, Mont." Plaintiff sued for commissions earned under the contract. *Held,* contract unenforcible for want of sufficient description, the Code requiring agreements authorizing brokers to sell real estate to be in writing and signed by party to be charged therewith. *Rogers* v. *Lippy et ux.,* (Wash., 1918), 169 Pac. 858.

The majority opinion finds its support in the case of *Thompson* v. *English,* 76 Wash 23. It was suggested in the principal case that if the problem were a new one in the state, a different conclusion might be reached from that